

2587
No. 12281

United States
Court of Appeals
For the Ninth Circuit.

MRS. LEE BROOKS, Also Known as Mrs. Gwend-
lyn Brooks,

Appellant,

vs.

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED
SEP 26 1949

PAUL P. O'BRIEN,

No. 12281

**United States
Court of Appeals**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

E. W. MILLER,
ELON G. GALUSHA,
417 S. Hill St.,
Los Angeles 13, Calif.

For Appellee:

ABE I. LEVY,
FRANK L. HIRST,
STEPHEN D. MONAHAN,
ASHER SCHEIR,
BENJAMIN CHAPMAN,
RICHARD G. SOLOF,
CHRISTIAN V. MURRAY,
1206 Santee St.,
Los Angeles 15, Calif. [1*]

* Page numbering appearing at bottom of page of original certified Transcript of Record.

In the District Court of the United States, Southern
District of California, Central Division

No. 8459-PH

TIGHE E. WOODS, HOUSING EXPEDITER,
OFFICE OF THE HOUSING EXPEDITER,
Plaintiff,

vs.

MRS. LEE BROOKS, also known as MRS.
GWENDYLN BROOKS, DOES I TO X,
Defendants.

COMPLAINT FOR RESTITUTION AND
INJUNCTION

For a First Cause of Action

I.

Plaintiff, as Housing Expediter, Office of the Housing Expediter, brings this cause of action for restitution pursuant to Section 205(a) to enforce compliance with Section 4 of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., and the Rent Regulations (10 Fed. Reg. 13528) issued by the Administrator pursuant to Section 2 of the Emergency Price Control Act of 1942, as amended, and/or brings this cause of action pursuant to Section 206 of the Housing and Rent Act of 1947, as amended, 50 U.S.C. Appendix 1881-1902, Public Law 464—80th Congress, 2d Session, and the Rent Regulations issued pursuant thereto.

II.

Jurisdiction of this cause of action is conferred upon this Court [2] by Sections 205 (c) of the Emergency Price Control Act of 1942, as amended, and/or Section 206 of the Housing and Rent Act of 1947, as amended.

III.

At all times mentioned herein prior to July 1, 1947, there was in effect a Rent Regulation for Housing issued pursuant to Section 2(b) of the Emergency Price Control Act of 1942, as amended, for the Los Angeles Defense Rental Area. At all times mentioned herein between July 1, 1947 and March 31, 1948, inclusive, there was in effect a Rent Regulation for Controlled Housing issued pursuant to Section 204(d) of the Housing and Rent Act of 1947 for said Defense Rental Area. At all times mentioned herein after March 31, 1948, there was in effect a Rent Regulation for Controlled Housing issued pursuant to Section 204(d) of the Housing and Rent Act of 1947, as amended, for said Defense Rental Area. At all times mentioned herein prior to July 1, 1947, the housing accommodations herein described have been subject to maximum rents authorized and established by the Emergency Price Control Act of 1942, as amended, and the said Regulations issued thereunder. At all times mentioned herein between July 1, 1947 and March 31, 1948, inclusive, said housing accommodations have been subject to maximum rents author-

ized and established by the Housing and Rent Act of 1947 and said Regulations issued thereunder. At all times mentioned herein after March 31, 1948, said housing accommodations have been subject to maximum rents authorized and established by the Housing and Rent Act of 1947, as amended, and said Regulations issued thereunder.

IV.

That the defendants, Doe I to Doe X, are the fictitious names of the defendants, whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered this complaint may be amended by inserting such true names in the place and stead of such fictitious names. Wherever the word "defendant" is used in this complaint, it shall include all of the defendants individually and collectively herein sued. [3]

V.

That the defendant is a resident of the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California, in the Central Division thereof. Defendant is within the jurisdiction of this Court.

VI.

During all times herein mentioned the housing accommodations known and described as 1742 West 36th Street, Los Angeles, California have been located within said Defense Rental Area.

VII.

Defendant received from persons for the use

and occupancy of the said accommodations rents in excess of the maximum rents established by said Rent Regulations. A Schedule is attached hereto and by reference made a part hereof, as though fully set out herein. Said Schedule states the names of the persons occupying said accommodations and the period of occupancy of such persons. Said Schedule states the rents received from said persons during said times. Said Schedule states the legal maximum rent for said accommodations during said times. Said Schedule states the amount of the overcharges received from said persons during said times.

For a Second Cause of Action

Plaintiff re-alleges and incorporates herein Paragraphs I, II, III, IV, V, VI and VII of his first cause of action as though set out in full herein.

II.

In the judgment of the Housing Expediter, Office of the Housing Expediter, said defendants have engaged in acts and practices in violation of Section 4(a) of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., and/or in violation of Section 206(a) of the Housing and Rent Act of 1947, as amended, 50 U.S.C. Appendix 1881-1902, Public Law 464—80th Congress, 2d Session, which acts and practices consist of violations of Rent Regulations for controlled Housing. [4] (10 Fed. Reg. 13528) issued

in accordance with Section 2(b) of the Emergency Price Control Act of 1942, as amended, and/or the Controlled Housing Rent Regulation issued pursuant to the Housing and Rent Act of 1947, and therefore the Housing Expediter brings this cause of action pursuant to the provisions of Section 206 of the Housing and Rent Act of 1947, as amended. Jurisdiction of this cause of action is conferred by Section 206 of the Housing and Rent Act of 1947, as amended.

WHEREFOR, the plaintiff demands:

A. That the defendant be ordered and directed to tender to all available tenants as are entitled thereto a refund of all amounts in excess of the maximum rents established by the Emergency Price Control Act of 1942, as amended, and Regulations issued thereunder, and/or the Housing and Rent Act of 1947, as amended, and Regulations issued thereunder, which were received by the defendant, his agents, servants, employees and attorneys from said persons as rent for the use and occupancy of the housing accommodations described in the complaint, since the date maximum rents were established therefor by said Acts and said Regulations.

B. A preliminary and final injunction enjoining the defendants, their agents, servants, employees, and all persons in active concert or participation with them from:

1. Directly or indirectly demanding or receiving amounts in excess of the maximum legal rent, or

from discontinuing, withholding, suspending, or shutting off the normal supply of heat, light, gas, hot and cold water, janitorial services, or other essential services and utilities, or threatening to do any of the foregoing.

2. Violating the Housing and Rent Act of 1947, as amended, and Regulations issued thereunder, as heretofore or hereafter amended or superseded.

3. Violating the Housing and Rent Act of 1947, as amended, and Regulations issued thereunder, as heretofore or hereafter amended or superseded, by accepting, demanding, or receiving, [5] in any form or manner, rents higher than the established maximum rent prescribed therein.

4. Engaging in any action or course of action, the purpose of which is to evict illegally tenants from the above-described premises, or any other housing accommodations owned, controlled, or managed by the defendants, or from evicting said tenants in any form or manner contrary to the Housing and Rent Act of 1947 and Regulations issued thereunder, as heretofore or hereafter amended or superseded.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,
CASSEL JACOBS,

By /s/ CASSEL JACOBS,

Attorneys for Plaintiff. [6]

Housing accommodations located at 1742 West 36th Street, Los Angeles, California.

Unit	Name of Tenant	Period of Overcharges	Amount Rent Pd.	Maximum Rent	Amount of Overcharges
Dining Room & East Frt. Bedroom	Mrs. Harold White.....	6-5-44 to 4-22-47	\$15.50 Week	\$10.00 Week	\$797.50
Porch Room Northwest Corner	Mrs. Mary Woodfaulk.....	12-11-46 to 5-17-47	8.50 Week	4.50 Week	76.00
	Mrs. Mary Woodfaulk.....	5-17-47 to 9-13-47	7.50 Week	4.50 Week	51.00
Total Amount of Overcharges.....					<u>\$924.50</u>

Statement referred to in Paragraph VII of Plaintiff's First Cause of Action.

[Endorsed]: Filed July 23, 1948. [7]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant and for answer to plaintiff's complaint herein, alleges, admits and denies:

I.

Denies, generally and specifically, each, every and all the allegations contained in paragraph VII, in plaintiff's first cause of action herein, in its complaint contained. Denies that the total amount of overcharges is the sum of \$924.50, or any other sum, or any sum at all; denies that the amount of overcharges of Mrs. Harold White is the sum of \$797.50, or any other sum, or at all; denies that the amount of overcharges by Mrs. [8] Mary Woodfaulk is the sum of \$76.00, or any other sum, or any sum at all; denies that the amount of overcharges of Mrs. Mary Woodfaulk is the sum of \$51.00, or any other sum, or any sum at all. On information and belief denies paragraph III thereof.

II.

Denies, generally and specifically, each, every and all the allegations contained in paragraphs I and II, in plaintiff's Second Cause of Action in plaintiff's complaint contained, except those matters admitted as to plaintiff's First Cause of Action.

Wherefore, defendant prays judgment against plaintiff; that plaintiff take nothing by its com-

plaint herein, and that the defendant go hence with her costs.

/s/ EDGAR G. WENZLAFF,
Attorney for the Defendant.

State of California,
County of Los Angeles—ss:

Mrs. Lee Brooks being by me first duly sworn, deposes and says: that she is the one of the defendants and also known as Gwendlyn Brooks in the above entitled action: that she has read the foregoing answer and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

/s/ MRS. LEE BROOKS.

Subscribed and sworn to before me this 9th day of August, 1948.

[Seal] /s/ EDGAR G. WENZLAFF,

Notary Public in and for the County of Los Angeles,
State of California.

Copy received.

[Endorsed]: Filed Aug. 10, 1948. [10]

[Title of District Court and Cause.]

OBJECTIONS TO FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND JUDG-
MENT.

To the Attorneys for Plaintiff Herein and to the
Above Entitled Court:

Defendant hereby objects to paragraph numbered
7 of plaintiff's Findings of fact and the Conclusions
of law based thereupon on the ground that said
figures and amounts of damages are predicated
upon an erroneous and fraudulent maximum rental
certificate and upon an insufficiency of the evidence
and that said judgment is against law.

Respectfully,

/s/ EDGAR G. WENZLAFF,
Attorney for defendant.

Overruled Dec. 2, 1948.

/s/ CHARLES C. CAVANAH,
U.S. District Judge.

Affidavit of service by mail attached.

[Endorsed]: Filed Dec. 1, 1948. [22]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff having filed his complaint for restitution and injunction, and the defendant Mrs. Lee Brooks, also known as Mrs. Gwendyln Brooks, having filed her answer thereto, and the matter having come on for trial on November 19th and 20th, 1948, before the Honorable Charles C. Cavanah, judge presiding without a jury, a jury having been waived by the parties hereto, and the plaintiff being represented by Richard G. Solof, Esq., and said defendant being represented by Edgar G. Wenzlaff, Esq., and both oral and documentary evidence having been introduced, and the Court being fully advised in the premises, the Court now makes the following:

Findings of Fact

1. That the plaintiff as Housing Expediter, Office of the Housing Expediter, is the proper party plaintiff duly authorized to bring this action under and pursuant to the Emergency Price Control Act of 1942, as amended, [24] and the Housing and Rent Act of 1947, as amended.

2. That this Court has jurisdiction of the defendant Mrs. Lee Brooks, also known as Mrs. Gwendyln Brooks.

3. That at all times pertinent to this action the Rent Regulation for Housing, issued pursuant to Section 2(a) of the Emergency Price Control Act

of 1942, as amended, and the Controlled Housing Rent Regulation, issued pursuant to the Housing and Rent Act of 1947, as amended, were in full force and effect in the Los Angeles Defense Rental Area.

4. That said defendant at all times pertinent to this action, was a resident of the City of Los Angeles, County of Los Angeles, State of California.

5. That at all times hereinafter mentioned in Paragraph 7 below, said defendant has been and is now the owner and landlord of housing accommodations located at 1742 West 36th Street, in the City of Los Angeles, State of California, and more particularly hereinafter described in the said Paragraph 7.

6. That the aforesaid housing accommodations are located within said Defense Rental Area, said accommodations being subject to said Rent Regulation for Housing and said Controlled Housing Rent Regulations.

7. That said defendant received from the following persons for the use and occupancy of the following apartments in the aforesaid housing accommodations located at 1742 West 36th Street, Los Angeles, California, rents in excess of the maximum rents established by the aforesaid Acts and Regulations as follows:

Unit	Name of Tenant	Period of Overcharges	Amount Rent Paid Week	Maximum Rent Week	Amount of Overcharges
Dining Room & East	Mrs. Harold White.....	6-5-44 to 3-17-47	\$15.50	\$10.00	\$747.50
Frnt. Bedroom					
Porch Room	Mrs. Mary Woodfaulk.....	12-11-46 to 5-17-47	8.50	4.50	76.00
Northwest Corner	Mrs. Mary Woodfaulk.....	5-17-47 to 9-13-47	7.50	4.50	51.00
Total amount of Overcharges.....					<u>\$874.50</u>

From the above Findings of Fact the Court makes the following:

Conclusions of Law

1. That plaintiff is entitled to an order requiring the defendant Mrs. Lee Brooks, also known as Mrs. Gwendyln Brooks to refund to all of the tenants listed in Paragraph 7 above, the rental overcharges demanded and received from said tenants by said defendant, as shown in said Paragraph 7 above.

2. That the defendant has violated Section 2(a) of the Rent Regulation for Housing and Section 2(a) of the Controlled Housing Regulation, and therefore has violated the provisions of the Emergency Price Control Act of 1942, as amended, and the provisions of the Housing and Rent Act of 1947, as enacted and amended.

3. That plaintiff is entitled to a permanent injunction enjoining the defendant, her agents, servants, employees, attorneys, and all other persons in active concert or participation with said defendant from directly or indirectly demanding or receiving for accommodations subject to the Rent Regulations issued pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended, rents in excess of the maximum rents permitted under the Rent Regulations issued pursuant

to the Housing and Rent Act of 1947, as heretofore or hereafter amended.

Dated: at Los Angeles, California, this 2nd day of December, 1948.

/s/ CHARLES C. CAVANAH,
U.S. District Court Judge.

Approved as to form:

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ RICHARD G. SOLOF,
Attorneys for Plaintiff. [26]

Receipt of a copy of the within Findings of Fact and Conclusions of Law is hereby acknowledged at 11:10 o'clock a.m., this 26th day of November, 1948.

/s/ EDGAR G. WENZLAFF,
Attorney for Defendant, Mrs.
Lee Brooks, also known as
Mrs. Gwendyln Brooks.

[Endorsed]: Filed Dec. 2, 1948. [27]

In the District Court of the United States for the
Southern District of California, Central Division

No. 8459-PH

TIGHE E. WOODS, HOUSING EXPEDITER,
OFFICE OF THE HOUSING EXPEDITER,
Plaintiff,

vs.

MRS. LEE BROOKS, also known as MRS.
GWENDYLN BROOKS, DOES I to X,
Defendants.

JUDGMENT AND DECREE FOR
PERMANENT INJUNCTION

The above entitled cause having come on for trial on November 19th and 20th, 1948, before the Honorable Charles C. Cavanah, judge presiding without a jury, a jury having been expressly waived, the plaintiff being represented by Richard G. Solof, Esq., and the defendant Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks, being represented by Edgar G. Wenzlaff, Esq., and both oral and documentary evidence having been introduced, and the Court having made its Findings of Fact and Conclusions of Law, and sufficient reason appearing therefor;

Now, Therefore, it is Ordered, Adjudged and Decreed, that:

1. Judgment shall be and it is hereby entered in favor of the plaintiff, on behalf of the United States Government, and against the defendant Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks, for the sum of Eight Hundred, Seventy-four and 50/100 Dollars (\$874.50), and that same [28] be paid to the plaintiff in the form of bank drafts, cashier's or certified checks or postal money orders, made payable to the Treasurer of the United States, as follows:

Two Hundred, Ninety-one and 50/100 Dollars
(\$291.50) on or before February 1, 1949;

Two Hundred, Ninety-one and 50/100 Dollars
(\$291.50) on or before April 1, 1949;

Two Hundred, Ninety-one and 50/100 Dollars
(\$291.50) on or before June 1, 1949.

2. Upon payment of the sums referred to in Paragraph 1 above, same shall be disbursed by plaintiff to the following persons in the following amounts:

Mrs. Harold White.....\$747.50

Mrs. Mary Woodfaulk..... 127.00

3. In the event plaintiff should be unable to locate any of the persons named in Paragraph 2 above, the amount to which said person or persons are entitled shall be retained by the Treasurer of the United States.

4. Upon default by the said defendant of any of the payments mentioned in Paragraph 1 above, all

of the payments provided for in said Paragraph 1 shall immediately become due and payable, at which time plaintiff shall have the right to levy execution to collect all of the payments mentioned in said Paragraph 1.

5. No execution shall issue on this judgment for a period of thirty (30) days from the date of entry thereof.

6. The complaint be and it is hereby dismissed as to defendants Does I to X.

7. The defendant Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks, her agents, servants, employees and all persons in active concert or participation with her be, and they are hereby permanently enjoined and restrained from directly or indirectly demanding and receiving for housing accommodations subject to the Rent Regulations issued pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended or super-

seded, rents in excess of the maximum rents permitted under said Act and Regulation.

Dated: at Los Angeles, California this 2nd day of Dec. 1948.

CHARLES C. CAVANAH

U.S. District Court Judge.

Approved as to form:

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By RICHARD G. SOLOF,
Attorneys for Plaintiff.

Receipt of a copy of the within Judgment and Decree for Permanent Injunction is hereby acknowledged at 11:10 o'clock a.m., this 26th day of November, 1948.

/s/ EDGAR G. WENZLAFF,
Attorney for Defendant, Mrs.
Lee Brooks, also known as
Mrs. Gwendyln Brooks.

[Endorsed]: Filed Dec. 2, 1948. [30]

United States District Court, Southern District of
California, Central Division

NOTICE BY CLERK OF ENTRY OF
JUDGMENT

Edgar G. Wenzlaff, Esq.,
Attorney at Law,
422 Subway Terminal Bldg.,
Los Angeles 13, Calif.

Abe I. Levy, Esq.,
Richard G. Solof, Esq.,
Attorneys, Office Housing Expediter,
1206 Santee Street,
Los Angeles 15, Calif.

Re; Tighe E. Woods, OHE, v. Mrs. Lee
Brooks, etc., et al, No. 8459-PH.

You are hereby notified that Judgment has been
entered this day in the above-entitled case, in Judgment Book No. 54, page 322.

Dated: Los Angeles, California, December 2, 1948.

EDMUND L. SMITH,
Clerk,

By /s/ C. A. SIMMONS,
Deputy Clerk. [31]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR NEW TRIAL

To: Tighe E. Woods, Housing Expediter, Office of the Housing Expediter and to Abe I. Levy, Stephen D. Monahan, Frank L. Hirst, Richard G. Solof, Esqs., his attorneys:

You, and each of you, will please take notice that the defendant, Mrs. Lee Brooks, also known as Mrs. Gwendyln Brooks, in the above entitled action, intends to move the above entitled court to vacate and set aside the decision rendered in the above-entitled action and to grant a new trial of said cause on the following grounds materially affecting the substantial rights of the defendant, to wit:

I.

That the decision is against the law in that the evidence showed a change in the Office of the Price Administration Order, which evidence is uncontradicted by either fraud or mistake, and the court ruled [32] against defendant on such evidence on an erroneous theory of law that defendant could not attack the validity of the Order, a legal point not involved in the case.

II.

That the decision is contrary to the evidence in that the evidence requiring a decision for defendant is uncontradicted and cannot be affected by the

erroneous conclusion of law applied to the case by the trial court.

III.

That the evidence is insufficient to justify the decision in that the evidence in favor of defendant is uncontradicted in the case.

Said motion will be made upon the Minutes of the Court and upon all the records in this case.

Dated: This 13th day of December, 1948.

/s/ E. W. MILLER,

Attorney for Defendant. [33]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles—ss.

M. Dunn, being first duly sworn says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above-entitled action; that affiant's business address is: 435 Subway Terminal Building, 417 South Hill Street, Los Angeles, California, that on the 13th day of December, 1948, affiant served the within Notice for Motion for New Trial on the plaintiff in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said plaintiff at the office address of said attorneys, as follows: "Messrs. Abe I. Levy, Stephen D. Monahan, Frank L. Hirst, Richard G.

Solof, Office of the Housing Expediter, 1206 Santee Street, L. A. 15, California''; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person, by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and there is a regular communication mail between the place of mailing and the place so addressed.

/s/ M. DUNN.

Subscribed and sworn to before me this 13th day of December, 1948.

[Seal] /s/ E. W. MILLER,

Notary Public in and for the County of Los Angeles, State of California.

Copy received.

[Endorsed]: Filed Dec. 13, 1948. [34]

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

E. W. Miller, Esq., is hereby substituted for, and in the place of Edgar G. Wenzlaff, Esq., as attorney for Mrs. Lee Brooks, also known as Mrs. Qwendyln Brooks, defendant in the above entitled action.

Dated: This 10th day of December, 1948.

/s/ MRS. LEE BROOKS,

Mrs. Lee Brooks, also known as Mrs. Gwendyln Brooks.

I Hereby Consent to the Above Substitution.

Dated: This 10th day of December, 1948.

/s/ EDGAR G. WENZLAFF.

I Hereby Accept the Above Substitution.

Dated: This 10th day of December, 1948.

/s/ E. W. MILLER.

Copy received.

[Endorsed]: Filed Dec. 14, 1948. [35]

At a stated term, to wit: The September Term. A.D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los

Angeles on Monday, the 31st day of January, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

For hearing on motion of defendant for a new trial, pursuant to notice thereof filed Dec. 22, 1948; R. G. Solof, Esq., appearing as counsel for plaintiff; E. W. Miller, Esq., appearing as counsel for defendant;

Attorney Miller makes a statement; and Attorney Solof makes a statement;

Court orders that the cause as to said motion stand submitted on briefs to be filed 10 x 5. [36]

[Title of District Court and Cause.]

MOTION TO DISMISS

To Plaintiff, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, in the above entitled action, and to Abe I. Levy, Stephen D. Monahan, Frank L. Hirst, Richard G. Solof, and Cassel Jacobs, Esqs., attorneys for plaintiff:

You, And Each Of You, will please take notice that, in connection with the Motion for New Trial now under consideration by this court heretofore submitted, and without asking for a hearing in open court, defendant moves this court for an

order dismissing this action, on the following grounds, to wit:

I.

That this court has no jurisdiction over this action for the reason that there was another action pending on the principal cause of this action herein, said action being Municipal Court Number 819627, commenced July 30, 1947, entitled Mrs. Harold White, formerly [37] Inez Hatchett, plaintiff, vs. Gwendlyn Brooks, also known as Gwendlyn Brooks Fox and Lee Brooks, defendants, at the time of the commencement of this action on July 23rd, 1948, which court had jurisdiction, and now has jurisdiction, of the cause of action relative to the overcharges claimed by said White, plaintiff in said Municipal Court action 819627.

II.

That this court has no jurisdiction in equity over any of the matters for which relief is sought herein for the reason that both claimants White and Woodfaulk had removed from, and were not residing on, the premises at the time this injunction suit was filed on July 23rd, 1948, said White having vacated said premises on April 17, 1947, and Woodfaulk having vacated said premises on September 13, 1947.

III.

That neither said complaint nor the first or second causes of action state facts sufficient to constitute a cause of action herein in that this is a penal action and Count I does not state definitely

whether it is under the 1942 statute or the 1947 statute, the allegations reading 1942 “and/or” 1947 and the allegations in regard to penal actions for collection of penalties must be definite.

IV.

That plaintiff is barred by the statute of limitations and guilty of laches in that this injunctive action was filed more than one year after the 1947 enactment effective July 1st, 1947, it being filed 22 days after one year if it is deemed brought under the 1942 statute as amended.

V.

Said motion will be based upon the ground of lack of jurisdiction and that the complaint does not state facts sufficient to constitute a cause of action and it will be based: [38]

(1) Upon points and authorities filed herewith;

(2) The file in said Municipal Court action No. 819627;

(3) The Minute Orders of September 11th and September 12th, certified copies of which are filed herewith, showing said action pending at this time and at the time of the filing of this action;

(4) Affidavits of Edgar G. Wenzlaff, E. W. Miller, and Mrs. Lee Brooks, filed herewith, and upon all the files, papers and pleadings herein.

Dated: This 9th day of February, 1949.

/s/ E. W. MILLER,

Attorney for Defendant. [39]

In the Municipal Court, City of Los Angeles,
County of Los Angeles, State of California.
Case Number 819627. White, plaintiff vs.
Brooks, et al, defendant.

MINUTE ORDER

Friday, September 12, 1947. Division 21.

Convened at 10 a.m., Present Hon. Frank G. Tyrrell, Judge; O. A. Hough, Deputy Clerk; and the following proceedings were had:

819627 White vs. Brooks, et al. No appearances. Cause called for Court's own Motion. On Court's own Motion, Order made September 11, 1947, granting plaintiff's Motion to dismiss action is Vacated and set aside. Further proceedings subject to stipulation of counsel.

I certify the foregoing Minutes were entered on September 15, 1947; and the foregoing Judgment was entered on date indicated and certified copy compared.

/s/ IONE KOENIG,
Deputy Clerk.

The Foregoing Minutes of Division 21—Are Correct.

/s/ O. A. HOUGH,
Court Clerk.

I Hereby Certify that the above is a full, true and correct copy of the Minute entry for Division 21, September 12, 1947, of the above entitled case

as the same appears in the Minute Book of the Court in the office of the Clerk of the Municipal Court, City of Los Angeles, County of Los Angeles, State of California.

Attest my hand and the seal of said Court this 8th day of February, 1949.

URBAN F. EMME,

Clerk of said Court.

[Seal] By /s/ FAYE A. STONEMAN,
Deputy. [40]

In the Municipal Court, City of Los Angeles,
County of Los Angeles, State of California.
Case Number 819627. White, plaintiff vs.
Brooks, defendant.

MINUTE ORDER

Thursday, September 11, 1947. Division 21.

Convened at 10 a.m., Present Hon. Frank G. Tyrrell, Judge; O. A. Hough, Deputy Clerk; and the following proceedings were had:

819627. White vs. Brooks. Stuart P. Fischer appearing for Plaintiff. Edgar G. Wenzlaff appearing for Defendant. Cause called for trial, whereupon the following proceedings were had: Plaintiff's Motion to dismiss action Granted. Ordered that defendants Gwendolyn Brooks and Lee Brooks recover costs from Mrs. Harold White formerly Inez Hatchett. Copy of judgment certi-

fied. Judgment ordered: Entered September 15, 1947 that on the complaint, defendants Gwendolyn Brooks and Lee Brooks recover from plaintiff Mrs. Harold White formerly Inez Hatchett costs as provided by law, in the sum of \$.

(See 9/12/47.)

Vacated by Court Order 9-12-47.

I certify the foregoing Minutes were entered on September 15, 1947; and the foregoing Judgment was entered on date indicated and certified copy compared.

/s/ IONE KOENIG,
Deputy Clerk.

The Foregoing Minutes of Division 21—Are Correct.

/s/ O. A. HOUGH,
Court Clerk.

I Hereby Certify that the above is a full, true and correct copy of the Minute entry for Division 21, September 11, 1947, of the above entitled case as the same appears in the Minute Book of the Court in the office of the Clerk of the Municipal Court, City of Los Angeles, County of Los Angeles, State of California.

Attest my hand and the seal of said Court this 8th day of February, 1949.

URBAN F. EMME,
Clerk of said Court.

[Seal] By /s/ FAYE A. STONEMAN,
Deputy.

[Endorsed]: Filed Feb. 10, 1949. [41]

[Title of District Court and Cause.]

AFFIDAVIT OF MRS. LEE BROOKS RE
MOTION FOR NEW TRIAL

State of California,
County of Los Angeles—ss.

Mrs. Lee Brooks, being first duly sworn, deposes and says:

That she is the defendant in this District Court action and that she makes this affidavit in support of the motion for new trial and motion to dismiss, and states as follows:

(1) That the tenant, Mrs. Harold White, formerly Mrs. Inez Hatchett, rented said premises on July 7, 1945, and not before, and that she vacated said premises on April 21, 1947, and did not occupy the same thereafter. That although plaintiff claims under a retroactive order going back to June 5, 1944, the judgment in this action is erroneous and not sustained by the evidence because there was no tenancy and no payments of rental by the tenant White prior to July 7, 1945, making a total of 56 weeks for which she has been [42] charged with an overcharge which has never been paid or collected rendering the judgment excessive and erroneous as to the tenant White in the amount of \$308.00.

(2) That the tenant Mrs. Mary Woodfaulk entered into possession of the premises on Dec. 13, 1946, and occupied the same until Oct. 15, 1947, when she vacated said premises and that during all

of said period said tenant never paid and affiant never received a sum in excess of \$4.50 per week and that the judgment herein is not sustained by the evidence and is contrary to the evidence that any overcharge was ever paid.

(3) That neither of said tenants were in occupation of said premises and had not been for a long time prior to the filing of this action, July 23, 1948, and that affiant never threatened in any way to violate any of the rights of the tenants while they were in possession or at any time thereafter.

(4) That affiant received a notice to register the housing accommodations in question and on receipt of said notice she, within a short time thereafter, went to the office of the Price Administration on June 4, 1947, and registered said tenancy as herein stated, that is, the White tenancy at \$7.50 per week and Woodfaulk tenancy at \$4.50 per week. That the reason for the difference in the amount of rent charged was that the White unit was occupied by two people and the Woodfaulk one person.

(5) That affiant never received any notice subsequent to the 4th day of June, 1947, either by personal service, registered mail or otherwise, notifying her or anyone of the intention on the part of the Price Administrator to change the amount of registration or the maximum amount of rent payable on the White unit, and had no knowledge of any change from \$7.50 on the White unit to \$15.50 as now appears in plaintiff's exhibit 2 in evidence as

enlarged by the enlargement prepared by this defendant and filed herein for the purposes of this motion for new trial and motion [43] to dismiss.

(6) That said registration certificate Exhibit 2-a was subsequently to the time the figures \$7.50 were placed thereon in Paragraphs 3 and 7 thereof by the apparent erasure of the figure "7" in front of the period and the insertion of the figure "1" followed by the figure "5" over the apparent erasure of figure "7", all of which appears more distinctly on the enlargement of said exhibit 2-a filed herein for the purposes of this motion.

That affiant never had the said registration certificate, exhibit 2-a, in her own hands nor did she take the same home with her after the registration and the same was left with her in the possession of Helen Gunthorp, the clerk who took said registration at the office of the O.P.A. That affiant never saw the same again until the same was used as an exhibit in the State Court action No. 819627, now pending.

(7) Relative to the evidence given in this action as to the amount of rent charged and received by affiant on both the White and Woodfaulk units, affiant now states that she never saw, and did not know, and that there was not present at the time of the payment of rent by either of said tenants, the witnesses other than the parties who testified herein that they saw the overcharges claimed herein paid.

(8) Affiant further says that on or about July 30, 1947, there was filed in the Municipal Court of the city of Los Angeles, county of Los Angeles, state of California, an action by Mrs. Harold White, plaintiff v. affiant and her husband, Lee Brooks, for the same overcharges of rental from said White as formed the basis of the damages in this equitable action. That said action was tried in the Municipal Court before Judge Frank G. Tyrrell and a judgment was entered and later set aside and said action is now pending. [44]

That Helen Gunthorp, a witness for the defendant, Mrs. Lee Brooks, in this action, testified upon direct examination that she was employed by the office of the Price Administration at the time defendant, Mrs. Lee Brooks, executed the registration certificate entitled "Plaintiff Exhibit 2-a" and that at the time she prepared said maximum rental certificate the amount of rent was \$7.50 and so written by her on said certificate. That she also gave this testimony at the trial of the case in the Municipal Court. That subsequently at the trial of this case and the case in the said Municipal Court she, Helen Gunthorp, noticed the amount of the rent on said certificate had been changed from \$7.50 to \$15.50.

/s/ MRS. LEE BROOKS,
Affiant.

Subscribed and sworn to before me this 9th day of February, 1949.

[Seal] /s/ E. W. MILLER,
Notary Public in and for said county and state.
Copy received.

[Endorsed]: Filed Feb. 10, 1949. [45]

[Title of District Court and Cause.]

AFFIDAVIT OF E. W. MILLER
RE MOTION FOR NEW TRIAL

State of California,
County of Los Angeles—ss.

E. W. Miller being first duly sworn, deposes and says:

That he is the present attorney for Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks, the defendant in this action. That this action was originally tried by Edgar G. Wenzlaff, Esq., as attorney for said defendant, Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks. That said Edgar G. Wenzlaff also appeared in the Municipal Court, city of Los Angeles, county of Los Angeles, state of California, as attorney for the said defendant and for her husband, Lee Brooks, said action being numbered 819627, filed in said court on the 30th day of July, 1947, seeking treble damages for violations of the same identical orders as are involved in this action; that attached hereto is the affidavit

of said Edgar G. [46] Wenzlaff showing certain facts as to the procedure therein by the court, the trial of said action in that court, a judgment in favor of said defendant, and the setting aside of said judgment, and the fact that said action is still pending, as appears by the file in said action which has been filed herein as an excerpt, and is hereby referred to and made a part of this affidavit by reference hereto.

Affiant further says that he has examined said file and all papers therein, and has examined the docket in said Municipal Court which shows that the judgment was entered dismissing said action with costs to defendant on September 11, 1947, and that said order was on September 12th, 1947, on Judge Frank G. Tyrrell's own Motion in said action, set aside with further proceedings, subject to stipulation of counsel; that neither said file nor said docket shows any proceedings subsequent to September 12, 1947, in said action and contains no entries showing the filing of any stipulation for further proceedings, but that said docket does show the filing of a stipulation and Order for the withdrawal of exhibits by said Gwendlyn Brooks' attorney in order that the same might be used for exhibits in this District Court action.

Affiant further says that for the purposes of this Motion he has caused to be filed herein and served on the attorneys for plaintiff, Tighe E. Woods, Housing Expediter, and Office of Housing Expediter, a photostatic enlargement of one of the exhibits in this case, a registration statement affecting the

property of Mrs. Harold White for the purpose of showing an erasure and alteration of the maximum rent as fixed by the Office of Price Administration, the change being from \$7.50 to \$15.50, which clearly shows on said sheet on two places, the first in Paragraph No. 3 and the second in Paragraph No. 7, the figures "15" being written over the number "7" erased for that purpose.

/s/ E. W. MILLER.

Subscribed and sworn to before me this 9th day of February, 1949.

[Seal] /s/ EDGAR G. WENZLAFF,
Notary Public in and for said county and state.

[Endorsed]: Filed Feb. 10, 1949. [47]

[Title of District Court and Cause.]

AFFIDAVIT OF EDGAR G. WENZLAFF
RE MOTION FOR NEW TRIAL

State of California,
County of Los Angeles—ss.

Edgar G. Wenzlaff being first duly sworn, deposes and says:

That he was the attorney of record and represented defendant Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks, in the trial of this action, and after the trial of this action E. W. Miller was substituted for and in the place of affiant for attorney for defendant.

Affiant further says he was, and now is, the attorney for said defendant in this action in the Municipal Court action No. 819627 filed in the Municipal Court of the city of Los Angeles, county of Los Angeles, state of California, on July 30, 1947, by Mrs. Harold White, formerly Inez Hatchett, and one of the claimants on behalf of whom this action has been filed by Tighe E. Woods, Housing Expediter. [48]

Affiant further says that said Municipal Court action is still pending; that it was tried in Division 21 of said Municipal Court, and that after the trial judge had expressed his opinion that judgment should be for defendant said action was dismissed with costs to the defendant Brooks. That thereafter, and on the 12th day of September, 1947, the Municipal Court Judge Frank G. Tyrrell, on his own Motion, vacated and set aside said judgment of dismissal and further ordered "further proceedings subject to stipulation of counsel."

Affiant further says that said action No. 819627 pending in said Municipal Court, city of Los Angeles, county of Los Angeles, state of California, is now pending; that no stipulation of counsel was ever filed thereafter and that no disposition of said case has ever been made by said Municipal Court.

That in said Municipal Court action affiant caused a counter claim to be filed on behalf of said Brooks for five weeks rent during which defendant White paid no rent and to which, in affiant's opinion, she was entitled under the Federal Acts involved.

Affiant further says that there was no testimony offered in this Federal case that the registration certificate, an enlargement of which is on file in this action, was ever taken home by Mrs. Lee Brooks after the same was filed in the office of the Price Administration and affiant recalls no testimony on the subject.

Helen Gunthorp, a witness for the defendant, Mrs. Lee Brooks, in this action, testified upon direct examination that she was employed by the office of the Price Administration at the time defendant, Mrs. Lee Brooks, executed the registration certificate entitled "Plaintiff Exhibit 2-a" and that at the time she prepared said maximum rental certificate the amount of rent was \$7.50 and so written by her on said certificate. That she also gave this testimony at the trial of the case in the Municipal Court. [49] That subsequently at the trial of this case and the case in the said Municipal Court she noticed the amount of the rent on said certificate had been changed from \$7.50 to \$15.50.

Affiant further says that plaintiff in this action in the Federal Court introduced no testimony to prove that there was any personal service of a notice on the behalf of the Office of Price Administration for the changing of the registration or the making of any retroactive order effective June 5, 1944, nor was there any evidence introduced that any such notice was served upon defendant, Mrs. Lee Brooks, by registered mail, either by way of

registration certificate or affidavit, or otherwise, to affiant's recollection.

/s/ EDGAR G. WENZLAFF.

Subscribed and sworn to before me this 9th day of February, 1949.

[Seal] /s/ E. W. MILLER,
Notary Public in and for said county and state.

[Endorsed]: Filed Feb. 10, 1949. [50]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL OF COPIES OF MOTION TO DISMISS AND MINUTE ORDERS, AUTHORITIES IN SUPPORT THEREOF, AFFIDAVIT OF W. E. MILLER, AFFIDAVIT OF EDGAR G. WENZLAFF, AFFIDAVIT OF MRS. LEE BROOKS, SECOND SUPPLEMENTAL BRIEF RE MOTION FOR NEW TRIAL AND COPIES OF MINUTE ORDERS, AFFIDAVIT OF E. W. MILLER, AFFIDAVIT OF EDGAR G. WENZLAFF, AFFIDAVIT OF MRS. LEE BROOKS IN SUPPORT THEREOF

M. Dunn being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles, that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 435 Subway Terminal Building, 417

South Hill Street, Los Angeles, California; that on the 10th day of February, 1949, affiant served the following documents: Motion to Dismiss and Authorities in Support Thereof, Affidavit of E. W. Miller, Affidavit of Edgar G. Wenzlaff, Affidavit of Mrs. Lee Brooks and copy of Minute Orders; and Second Supplemental Brief re Motion for New Trial and Affidavit of E. W. Miller, Affidavit of Edgar G. Wenzlaff, Affidavit of Mrs. Lee Brooks in support thereof, and copy of Minute Orders, in the above entitled action on the attorneys for plaintiff in the above entitled action, to wit: Abe I. Levy, Stephen D. Monahan, Frank L. Hirst, Richard G. Solof, Cassel Jacobs, Office of the Housing Expediter, 1206 Santee Street, Los Angeles 15, California, by placing a copy of each document in an envelope addressed to said attorneys at the above address, being said attorneys' business address, and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ M. DUNN.

Subscribed and sworn to before me this 10th day of February, 1949.

[Seal] /s/ E. W. MILLER,
Notary Public in and for said county and state.

[Endorsed]: Filed Feb. 12, 1949. [51]

At a stated term, to wit: The February Term. A.D. 1949, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday, the 3rd day of March, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

On Court's own motion, the order heretofore entered herein submitting defendants' motion for a new trial and motion to dismiss is now ordered vacated and set aside and the case re-transferred to the calendar of Judge Cavanah for hearing on March 14, 1949, said case having heretofore been decided by Judge Cavanah after trial. [53]

At a stated term, to wit: The February Term. A.D. 1949, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 14th day of March, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Chas. C. Cavanah,
District Judge.

[Title of Cause.]

For hearing motion for a new trial; R. G. Solof, Esq., appearing as counsel for plaintiff; E. W. Miller, Esq., appearing as counsel for defendant, who is present; Attorney Miller argues for defendant; Attorney Solof makes a statement and argues; the Court makes a statement; Attorney Miller argues further; the Court makes a statement; Court orders motion for a new trial overruled, and allows 30 days' stay of execution on the judgment. [54]

[Title of District Court and Cause.]

NOTICE OF APPEAL

(From Judgment and Orders)

Notice is hereby given that the defendant, Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain judgment heretofore entered in this action on December 2, 1948, in Judgment Book 54 at page 322 and from the whole thereof; and also from the order denying said defendant's motion for a new trial herein; and also from the order denying said defendant's motion to dismiss this action on jurisdictional and other grounds.

April 6, 1949.

E. W. MILLER and
ELON GALUSHA,

By /s/ E. W. MILLER,
Attorneys for Defendant
Mrs. Lee Brooks.

[Endorsed]: Filed April 12, 1949. [55]

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

E. W. Miller and Elon G. Galusha are hereby substituted as attorneys for the defendant and appellant for the defendant Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks in the above entitled cause.

April 20, 1949.

/s/ MRS. LEE BROOKS.

I hereby consent to the foregoing substitution of attorneys.

April 20, 1949.

/s/ E. W. MILLER.

I hereby consent to the foregoing substitution of attorneys.

April 20, 1949.

/s/ E. W. MILLER,

/s/ ELON G. GALUSHA.

[Endorsed]: Filed April 22, 1949. [56]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 72, inclusive, contain the orig-

inal Complaint for Restitution and Injunction; Answer; Request for Admissions Under Rule 36; Answer to Request for Admissions Under Rule 36; First Supplemental Answer to Request for Admissions; Objections to Findings of Fact and Conclusions of Law and Judgment; Findings of Fact and Conclusions of Law; Judgment and Decree for Permanent Injunction; Copy of Notice by Clerk of Entry of Judgment; Notice of Motion for New Trial; Substitution of Attorneys; Motion to Dismiss; Separate Affidavits of Mrs. Lee Brooks, E. W. Miller and Edgar G. Wenzlaff re Motion for New Trial; Affidavit of Service by Mail of Motion to Dismiss, etc.; Copy of Letter dated September 15, 1947, from Stuart P. Fischer to Mrs. Harold White; Notice of Appeal; Substitution of Attorneys filed April 22, 1949; Points on Which Appellant Intends to Rely on this Appeal; Request for Preparation of Clerk's Transcript on Appeal; Stipulation and Order Extending Time to File Counter-Designation and Time to File Record and Docket Appeal; Stipulation and Order Extending Time to File Record and Docket on Appeal; Appellee's Designation of Additional Record and Stipulation Amending Appellee's Designation of Additional Record and full, true and correct copies of Minute Orders Entered January 31, 1949; March 3, 1949, and March 14, 1949, which, together with original Plaintiff's Exhibits 1, 4, 2-A and enlargement thereof and Defendant's Exhibit A, transmitted herewith, constitute the record on appeal to the

United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$3.45, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 29th day of June, A.D. 1949.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12281. United States Court of Appeals for the Ninth Circuit. Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks, Appellant, vs. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed July 1, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12281

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff and Appellee,

vs.

MRS. LEE BROOKS, Also Known as Mrs. Gwend-
lyn Brooks,

Defendant and Appellant.

POINTS ON WHICH APPELLANT INTENDS
TO RELY ON THIS APPEAL

Appellant Intends to Rely Upon the Following
Points, to wit:

As to Lack of Jurisdiction

1. The District Court erred in assuming jurisdiction because there was at the time of the filing of this action, an action pending on the larger claim, for over-charges, filed by the tenant, White, in the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, No. 819627, which was a court of co-ordinate jurisdiction, and the same is still pending.

2. The District Court erred in refusing to dismiss the action on the defendant's Motion to Dismiss and to grant a New Trial when the lack of

jurisdiction was thereby called to the Court's attention.

3. The point of the defense of lack of jurisdiction may be raised at any time and is not waived by a failure to include such defense in the answer, and, therefore, the Court erred in denying defendant's Motion to Dismiss for lack of jurisdiction. The Housing Expediter had no cause of action against this defendant at the time he filed the Federal action because the tenant he represented had already elected to sue in the State Court and that action was then pending.

Equitable Action Unfounded

4. The tenant, having elected to sue at law, the Housing Expediter was without right or authority to sue in equity, and seek restitution as an incident thereto.

Termination of Act Terminated Action

5. The 1947 Housing and Rent Act as amended in 1948, having expired by its terms on March 31st, 1949, and this action being then pending and undetermined and an appeal having been taken herein by the filing of the Notice of Appeal and Bond on April 12th, 1949, the right of action on which the Judgment herein is based terminated with the act. That said Judgment became devitalized and unenforceable thereby.

Errors of Law

6. There was no ground or foundation for an equitable action (with restitution as a part of the relief granted) because the tenants had moved out of the property before this action was filed. There was, therefore, no foundation for judgment for damages.

7. The right to recover for the benefit of either tenant was barred by the one year limitation in the Act under which the action was instituted. The action was filed July 23, 1948. Appellant claims that restitution on any violations prior to July 23, 1947, was barred. This barred all of the White claim for \$747.50 for the period June 5, 1944, to March 17, 1947, and all of the Woodfaulk claim from December 11, 1946, to July 23, 1947, for \$103.00, leaving only \$24.00 for the period within the year.

8. The complaint fails to state a cause of action because it is not definitely stated in either of the two causes of action upon which of two Federal Acts it is based; for the allegation in the first cause of action is that it is based upon Section 205C of the Emergency Price Control Act of 1942 as amended and/or Section 206 of the Housing and Rent Act of 1946, as amended; and the same "and/or" allegation appears in the second cause of action. In this kind of an action such an indefinite allegation is wholly insufficient on which to found a judgment.

9. Error in law granting injunction to prevent enforcement of an Order where the reason or occasion for the enforcement had already expired in that the tenant was not longer in possession of the premises.

10. No jurisdiction exists in this case as alleged in the complaint under Section 206 of the Housing and Rental Act of 1947, as amended for the reason that the 1948 Act is not an interpretation of the prior Act or Acts, but is an entirely new Statute.

Dated: July 20, 1949.

E. W. MILLER and
ELON G. GALUSHA.

By /s/ E. W. MILLER,
Attorneys for Defendant and
Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed July 29, 1949.

[Title of Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD ON
WHICH APPELLANT RELIES AND TO
BE PRINTED

The appellant, Mrs. Lee Brooks, also known as Mrs. Gwendlyn Brooks, hereby designates the following portions of the record of the United States

District Court, from which this appeal is taken, to be printed by the Clerk of this Court, to wit:

1. The complaint for restitution and injunction, filed July 23rd, 1948.

2. The answer of the defendant, Mrs. Lee Brooks, omitting Affidavit of Service filed August 10th, 1948.

3. The Findings of Fact and Conclusions of Law, dated December 2nd, 1948, and filed on that date.

4. Objections to Findings of Fact and Conclusions of Law and Judgment of defendant, Mrs. Lee Brooks, filed December 1st, 1948.

5. Judgment and Decree for Permanent Injunction, filed December 2nd, 1948.

6. Notice by Clerk of entering of Judgment, made and filed December 2nd, 1948.

7. Notice of Motion for a new Trial and Affidavit of Service by mail on December 13th, 1948, and filed December 13th, 1948.

8. Substitution of attorneys, E. W. Miller for Edgar G. Wenzlaff, as attorney for defendant, filed December 14th, 1948.

9. Motion to Dismiss, together with exhibits filed therewith, to wit: The Minute Orders of September 11th, 1947, (re Judgment dismissing action) and September 12th, 1947, (re Order Vacating and Setting Aside Judgment dismissing action, showing

that further proceedings in said action would be subject to stipulation of counsel) both in Municipal Court action No. 819627, Municipal Court, City of Los Angeles, County of Los Angeles, State of California, entitled White versus Brooks, et al., and the Affidavits of Edgar G. Wenzlaff, E. W. Miller, and Mrs. Lee Brooks, filed therewith and made a part thereof, all filed for use on Motion to Dismiss and Motion for New Trial, as shown by Affidavit of Service of Motion to Dismiss.

10. Affidavit of Service by Mail of Motion to Dismiss and Supplemental Brief, and further papers on Motion for New Trial, dated February 10, 1949, and filed February 12, 1949.

11. Notice of Appeal, filed April 12th, 1949.

12. Substitution of Attorneys, E. W. Miller and Elon Galusha in place of E. W. Miller alone, filed herein.

13. This Notice to Clerk and Request for preparation of Transcript, to be filed herein.

14. Minute Order, dated January 31st, 1948, No. 8459 PH Civil, recorded in Volume 68, Page 260, Minute Book, Central Division, Order of Judge Hall reading as follows: "For hearing on Motion of defendant for a New Trial, pursuant to Notice thereof, filed December 22nd, 1948; R. G. Solof appearing as counsel for plaintiff; E. G. Wenzlaff, Esq., appearing as counsel for defendant, attorney Wenzlaff makes a statement and attorney Solof makes a statement.

“Court orders that the case as to said Motion stands submitted on briefs to be filed 10 x 5 (Volume 68, Page 260 Minute Book, Central Division.)”

(Correction: E. W. Miller appeared for defendant and not Edgar G. Wenzlaff, whose name is given above in error.)

15. Minute Order dated March 3, 1949, No. 8459 PH Civil, recorded in Volume 68, at Page 695, by Judge Hall, in Minute Book, Central Division, reading as follows:

“On Court’s own Motion, the Order heretofore entered herein submitting defendant’s Motion for a New Trial and Motion to Dismiss is now ordered vacated and set aside and the case re-transferred to the calendar of Judge Cavanah for hearing on March 14, 1949, on defendant’s Motion, said case having heretofore been decided by Judge Cavanah after trial.”

(Correction: The above transfer to Judge Cavanah was not on the Motion of defendant, but apparently on the Court’s own Motion.)

16. Minute Order, dated March 14th, 1949, appearing in Book 69, at Page 146, Minute Book, Central Division, by Judge Cavanah, reading as follows:

“Present Hon. Charles C. Cavanah, District Judge; F. E. Cross, Deputy Clerk; Thos. B. Goodwill, reporter; Woods, etc., vs. Mrs. Lee Brooks, etc., No. 8459, PH Civil.

“For hearing Motion for a New Trial, R. G. Sollof, Esq., appearing as counsel for plaintiff, E. W. Miller, Esq., appearing as counsel for defendant,

who is present. Attorney Miller argues for defendant. Attorney Solof makes a statement and argues. The Court makes a statement; Attorney Miller argues further. The Court makes a statement; the Court orders Motion for a New Trial overruled and allows thirty days to appeal."

(Correction: It was on Motion of defendant's counsel that the Court ordered a thirty day stay of execution, instead of allowing thirty days to appeal, as stated in the above Order.)

17. Plaintiff's Exhibits 1, 2-A, and 4, and also the photostatic enlargement of plaintiff's Exhibit 2-a, being the office of Price Administration registration of rental dwellings.

18. The attached statement by appellant of the Points on which defendant intends to rely on this appeal, filed in this Court (omitting the Designation filed in the District Court).

19. The complaint contained in the Municipal Court action File No. 819629, now pending, but not any other portion of the record, for the status of the action is shown by the certified copy of the Minute Orders in that action, and Exhibits to the Affidavits filed in the Motion to Dismiss and for a New Trial.

The Appellant, on this appeal, is not requesting the preparation or use, on the appeal, of the Reporter's Transcript, of any part of the testimony, for

the reason that the above described record is deemed sufficient to present the legal questions to be argued on this appeal.

Dated: This 20th day of July, 1949.

E. W. MILLER and
ELON G. GALUSHA.

By /s/ E. W. MILLER,
Attorneys for Defendant and Appellant, Mrs. Lee
Brooks.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed July 29, 1949.

